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United States General Accounting Office  
Washington, DC 20548

Comptroller General  
of the United States

## Decision

**Matter of:** G & J Small Construction, Inc.

**File:** B-286716

**Date:** February 5, 2001

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T. Charles Althausen, Esq., Olson Althausen Lawler & Samuelson, for the protester.  
W. Gregory Guedel, Esq., Foster Pepper & Shefelman, for MRM Construction, Inc.,  
the intervenor.

Timothy J. Binder, Esq., Department of Transportation, for the agency.  
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General  
Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

A bid containing signatures of the president that differed in appearance was improperly rejected where the agency failed to consider the post-bid-opening explanation of the bidder regarding who had signed the bid and why the signatures were different, which should have removed any concern about the signatures.

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### DECISION

G & J Small Construction, Inc protests the rejection of its bid under invitation for bids (IFB) No. DTFH70-00-B-00017, issued by the Federal Highway Administration, Department of Transportation, for the construction of various sites along State Route 410 in Washington.

We sustain the protest.

The IFB, issued on September 8, 2000, provided for the award of a fixed-price contract for the construction work. The agency received seven bids, including G & J's, by bid opening on October 11. The apparent low bid was rejected as nonresponsive; G & J's bid was second low.

The president of G & J had purportedly signed G & J's bid in three places--lines 20B and 30B of the IFB's standard form (SF) 1442 and amendment No. A001 to the IFB--and had signed the bid bond submitted with the bid. Agency Report, Tab 5, G & J's Bid. The contracting officer found in reviewing the bid that, although three

of the signatures were identical, the signature on line 30B of the SF 1442 was noticeably different. Contracting Officer's Statement of Facts.

The contracting officer determined that, because of the "discrepancy in the signatures," the bid submitted by G & J was nonresponsive. Id. The contracting officer informed G & J of this by letter dated October 20, stating that "[t]he apparent forgery creates an uncertainty as to whether the documents show your intent to be bound as of the time of bid opening." Agency Report, Tab 8, Contracting Officer's Letter to G & J.

The president of G & J responded shortly thereafter with a letter stating that "I readily admit that the signature on block 30-B is not mine." The letter explained that the individual who had brought the bid to the bid opening noticed that the president had not signed block 30B of the bid's SF 1442, and telephoned the president to discuss what to do. The letter states here that the president informed the individual that, because he had power-of-attorney to sign for the president, "he could sign [the president's] name on [the] contract." This letter was accompanied by a copy of the power-of-attorney and a statement from the president that the signatures "guarantee my intent to be bound to the contract." Agency Report, Tab 8, G & J Letter to Contracting Officer (Oct. 24, 2000).

The contracting officer considered the letter and its attachments, and determined that G & J's bid was nonresponsive. In her letter to G & J, the contracting officer noted that the individual who had signed the president's name was authorized in the power-of-attorney submitted by G & J to enter into contracts on G & J's behalf, and by the solicitation mailing list application (SF 129) that G & J had submitted in September, which had specifically listed the individual (and the president) as "authorized to sign offers and contracts" in G & J's name. The contracting officer concluded, however, that the "possible forgery" on line 30B of G & J's bid "called into question the integrity of the total package." Agency Report, Tab 8, Contracting Officer's Letter to G & J (Oct. 26, 2000). The contracting officer reasoned that, although the protester's October 24 letter "helps to explain the two signatures on the bid form . . . the validity of each bid must be capable of determination from the bid documents themselves at the time of bid opening," and that accordingly, she was precluded from considering G & J's post-bid-opening explanation. Id. Agency Report at 3.

The protester argues that the contracting officer acted improperly in rejecting G & J's bid without inquiry, and points out that the individual who signed the president's name is authorized to sign bids on G & J's behalf. The protester adds that in any event, because the president had signed the bid herself in two places, there is no question as to G & J's intent to be bound by its bid, nor is there any question as to whether G & J is legally bound to perform the contract in accordance with its bid.

Evidence required to show the authority of an individual signing a bid may be presented after bid opening. FMS Corp., B-228201, Sept. 30, 1987, 87-2 CPD ¶ 318

at 1; Cambridge Marine Indus., Inc., B-202965, Dec. 31, 1981, 81-2 CPD ¶ 517 at 2. The sufficiency of the evidence presented is largely a factual question to be resolved by the contracting agency after consideration of all the materials presented. Alpha Q, Inc., B-234403.2, Oct. 31, 1989, 89-2 CPD ¶ 401 at 2.

In Alpha Q, Inc., *supra*, the low bid received bore the “signature” of the president of the firm followed by three initials in parenthesis. Because of this, the agency requested information from the firm “concerning the legal effectiveness of the signature.” *Id.* at 2. The firm explained in an affidavit that the bid, at the direction of the president, had actually been signed by an employee of a prospective subcontractor of the firm. The agency determined that the explanation “was sufficient evidence to establish the signing individual’s authority to execute the bid and bind [the firm].” *Id.* at 3. Our Office, in considering a protest challenging the responsiveness of the bid and propriety of the agency’s actions, found that the agency had properly requested the information, that its factual determinations based upon the information received were reasonable, and that the agency had properly found the bid responsive.

Our decisions in this area recognize an obligation on the part of an agency that has questions regarding the authority of the individuals whose signatures appear on a bid to raise these questions with the bidder. *See, e.g., Cambridge Marine Indus., Inc., supra.* Here, we agree with the contracting officer that the differing appearance of the signatures on G & J’s bid raised certain concerns, such as who actually signed the bid or whether there may have been a forgery. However, the concerns raised, rather than requiring the rejection of G & J’s bid, obligated the contracting officer to seek an explanation from G & J, and this was in essence done through the above-noted exchange of letters between the contracting officer and G & J. The contracting officer, however, then erred in ultimately concluding that she could not consider G & J’s post-bid-opening explanation. Rather, the contracting officer was obligated to consider G & J’s explanation in resolving her concerns. *See id.*

From the record, it is undisputed that the president of G & J has the authority to bind the firm, and that she signed G & J’s bid in two places—lines 20B of the IFB’s SF 1442 and amendment No. A001 to the IFB—and signed the bid bond G & J submitted with its bid. Moreover, as admitted by the agency, if block 30B of the SF 1442 had been left unsigned by G & J, there would have been no question about the “viability” of G & J’s bid. Agency’s Memorandum of Law at 1; JRW Enters., Inc., B-238236, May 11, 1990, 90-1 CPD ¶ 464 at 2. Thus, G & J’s bid was responsive based on the actual signatures of the president in the bid and bid bond, because these signatures in themselves established the bidder’s intent to be bound by the bid and in fact legally bound G & J to perform the contract in accordance with its bid. M.R. Dillard Contr., B-271518.2, June 28, 1996, 96-2 CPD ¶ 154 at 3. G & J’s bid therefore was erroneously rejected.

The protest is sustained.

We recommend that the agency award the contract to G & J, if otherwise appropriate. In addition, we recommend that G & J be reimbursed the costs of filing and pursuing this protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2000). The protester should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1) (2000).

Anthony H. Gamboa  
Acting General Counsel